In the High Court of Uttaranchal at Nainital.

Writ Petition No. 4527 (S/S) of 2001

1- Inder Singh S/o Sri Kunwar Singh
R/o village Kotali Tehsil and District
Pithoragarh.

2- Gokulanand Upadhyaya S/o Sri Radha Ballabh
Upadhyaya R/o village Kholi, P.O. Bhatari
(Thal) District Pithoragarh.

3- Narayan Singh S/o Sri Galip Singh
R/o village Malla Baperu,
Tehsil and District Champawat ..Petitioners.

Vs.

1- State of Uttaranchal,
2- District Magistrate/Collector Champawat.
3- Sub Divisional Magistrate/Sub Divisional Officer,
Lohaghat, District Champawat,
4- Tehsildar, Champawat,
District Champawat ..Respondents.

AND

Contempt Application No.300 of 2001

Inder Singh and two others ……Applicants.

Vs.

Rajendra Singh Dangwal and another … Opposite Parties.

Sri P.S.Adhikari and Sri B.S.Adhikari learned counsel for the petitioners-applicants.
Sri Nand Prasad, learned Standing Counsel for respondents-opposite parties.

Date of Judgment: 9-4-2004.

ORAL JUDGMENT **(Per: Hon'ble Irshad Hussain, J.)**

This writ petition has been filed under Article 226 of the Constitution of India with the prayers to issue:-

(a) a writ, order or direction in the nature of mandamus directing the respondent nos. 2, 3 and 4 to permit the petitioners to discharge their duties as the Collection Amins without any interference

by them in the official functioning of the petitioners as Seasonal Collection Amins.

(b) a writ, order or direction in the nature of mandamus directing the respondents to pay the salaries and allowances to the petitioners permissible under law as were being paid earlier with all the arrears form the date of illegal and incompetent oral order.

(c) a writ, order or direction in the nature of mandamus commanding the respondents to regularize the services of the petitioners who have completed more than 11 years services as Seasonal Amins and be given all the benefits permissible to the regular Collection Amins.

2- Petitioners were appointed by respondent no.3 Seasonal Collection Amins in the year 1990. Petitioner no.3 was ceased on 1.7.1991 but was again appointed on 16.2.1993 in the pay scale of Rs. 950-1500. Petitioner nos. 1 and 2 continuously worked as seasonal Collection Amin but in the year 1997 the petitioners were ceased to work without any notice to them by the respondent authorities. Aggrieved, they filed writ petition no. 31424/1997 along with others and the same was disposed of finally by the Allahabad High Court per order dated 30-7-1998 (Annexure-4). Since on facts and law the case was covered by the judgment of the court in writ petition no. 9557/1997 Umrao Singh and others versus state of U.P. and others decided on 16.7.1997 the said petition was disposed of on the same direction as were made in the referred writ petition. Writ petition no. 9557/1997 was filed by seasonal Collection Amins of Nainital district who have challenged their termination and it was decided by judgment dated 16-7-1997 wherein it was held and directed that:-

> “Since the petitioners have been performing the same work of the regular Collection Amin and regular Collection Peon, I direct that they shall be given the same salaries, allowances and other benefits and other facilities as regular Collection Amins and Collection Peons, as the case may be, on the principle of equal pay for equal work. The State Government is further directed to take a decision of the recommendation of the District Magistrate,

Nainital, for creation of posts (copies of which are annexures-1 and 2 to the writ petition) expeditiously, and till then the services of the petitioners shall be continued without any artificial break in service."

3- After the judgment and order dated 30-7-1998 passed in writ petition no. 31424/1997 the petitioners were reinstated with effect form July 1999 (Annexure-6). However on 30-3-2000 petitioner nos. 1 and 2 were asked by the respondent authorities to hand over the charge and deposit the receipt books of the revenue with the Accountant, their representation dated 22.4.2000 did not yield any favourable result. Later on the oral order of removal was withdrawn as per the direction of the respondent no. 2 on 1.7.2000 and the petitioner nos. 1 and 2 were permitted to work continuously once again except some artificial breaks.

4- It is further alleged that on 19-7-2001 the petitioners were again directed by respondent no.4 to hand over their charge and receipt books whereupon representations were preferred by them to various authorities and local M.L.A. (Annexures 10, 10-A, 10-B, 11, 11-A, 11-B, 12 and 13). It is also the grievance of the petitioners that although they have discharged the duties of the Collection Amins continuously for more then 11 years except some artificial breaks, they have not been regularized by the respondents although the notification dated 23.10.1992 under the provisions of U.P. Collection Amin Service Rules, 1994 require that the Seasonal Collection Amins could be appointed as Collection Amins, if they have worked of more than four Fasli Seasonal. The denial of the right to continue in service and also the non-regularisation is termed by the petitioners as violation of their right to work guaranteed by law and the same is illegal, unjust, arbitrary and unconstitutional. The petitioners finding no alternative and efficacious remedy for redressal of their grievance filed this writ petition.

5- The petition is resisted on the ground that the petitioners were appointed as temporary Collection Amins and they were removed by the respondent authorities on the basis of their unsatisfactory performance and as such they were not entitled to claim parity to those Seasonal Collection Amins who were the petitioners in writ petition no.

9557/1997, Umrao Singh and others versus State of U.P. and others and decided by the Allahabad High Court on 16-7-1997.

6- The gist of the argument of the learned counsel for the petitioners was that the case of the petitioners on law and facts was fully covered by the decision of the Allahabad High Court in writ petition no. 9557/1997, Umrao Singh and others vs. State of U.P. and others and that although similarly situated Seasonal Collection Amins have been regularized the petitioners have not been given benefit of the said decision. The relevant observations and the conclusions in the Umrao Singh's case need to be reproduced here as under:-

> "The service conditions of the Collection Amins are mentioned in U.P. Collection Amin Service Rules, 1974. By a notification dated 23.10.92certain amendments were made in thereto Rules. True copy of this notification is annexure-3 to the petition. By this amendment certain Seasonal Collection Amins can be appointed as Collection Amins, if they have worked for more than four seasons. The petitioner nos. 1 to 7 have worked satisfactorily for more than four seasons as stated in paragraph—22 of this petition. In paragraph -24 it is stated that 50 percent post of Collection Peons are to be filled from Seasonal Collection Peons vide annexure-5 to the petition. In paragraph-33 it is stated that except for one single person there is no Collection Amin in Tehsil Nainital, although there is need for many more……..
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> It appears that the decision in the hills is different from that in plains of U.P. The patwrari was revenue official equivalent to Lekhpal but his power were wider since they include police powers. Hence, the decision of this court relating to Seasonal Collection Amins to the plains areas of U.P. can not be applicable to the hill areas. In the hill areas, as alleged in the petition, the Seasonal Collection Amins are doing exactly the same work as the Collection Amin, unlike to the plains. Hence, there is nothing "Seasonal" about the work of Seasonal Collection Amins. In fact, the District Magistrate, Nainital, has been repeatedly writing to the higher authorities in this connection vide annexures-1 and 2 to the

writ petition. Similarly, the Seasonal Collection Peons are dong the same work as regular Collection Peons."

7- From the above it can be said without doubt that the facts of the instant writ petition are not at variance and the petitioners having worked as Seasonal Collection Amins for about 11 years continuously except for some artificial breaks they could not have been denied the benefit of the direction given in the afore-mentioned writ petitions by the Allahabad High Court. An attempt was made by the learned Standing Counsel to defend the inaction on the part of the respondents by submitting that the performance of the petitioners was not satisfactory and therefore their cases for regularization were not considered. Nothing has been brought on record to justify the plea and I am not inclined to accept that the petitioners were made to work for such a long period even though their work or conduct was unsatisfactory. The stand taken up by the respondents is nothing but only a false pretext to deprive the petitioners from getting the benefit of the notification dated 23-10-1992 under the relevant rules of 1974 and thereby to deny them equality of law in violation of the mandate of Articles 14 and 16 of the Constitution of India.

8- For the reasons aforesaid this writ petition is to be disposed of with the appropriate directions to be respondents.

9- The writ petition is hereby disposed of with the directions to the respondents to consider the claim of the petitioners for regularization within a period of three months from the date of the receipt of the certified copy of this order and the petitioners if they are working as Seasonal Collection Amins shall be permitted to discharge their duties as such till a decision is taken by the respondents.

10- The contempt petition also stand disposed of accordingly and the notice is discharged.

ISB **(Irshad Hussain, J.)**